

APPEAL NO. 022831
FILED DECEMBER 13, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 7, 2002. With respect to the single issue before her, the hearing officer determined that the appellant (claimant) did not have disability as a result of his _____, compensable injury, from May 15 to July 16, 2002. In his appeal, the claimant argues that the hearing officer's determination that he did not have disability in that period is against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not have disability for the period from May 15 to July 16, 2002, as a result of his _____, compensable injury. The parties executed an agreement that the claimant had disability from "July 17, 2002 until the present" due to the claimant's shoulder surgery of July 17, 2002. The parties do not dispute that the claimant returned to a light-duty job with the employer following his injury and that he continued to work in that position until May 14, 2002, when his employment with the employer was terminated for a conflict of interest. Specifically, the employer discharged the claimant from employment after he had given his business cards for two personal businesses he had, a painting business and a surfacing business. A witness for the carrier testified that the claimant's businesses were considered to be in direct competition with the employer and that, as a result, the claimant's employment with the employer was terminated as his having such a business was considered to be a violation of the employment policy regarding outside employment. The claimant had the burden of proving that he had disability for the period from the day after his employment was terminated to the day before he underwent surgery for his compensable injury. The hearing officer determined that the claimant was terminated for cause and that, as a result, he did not have disability for the period between May 15 and July 16, 2002. Although the hearing officer's decision and some Appeals Panel decisions have spoken in terms of whether a decision to terminate a claimant's employment was made for cause, it should not be understood that the hearing officer is resolving an employment law claim for wrongful termination. Rather, the hearing officer is to decide whether the claimant's employment was terminated for a reason unrelated to the injury. If, as in this case, the hearing officer determines that the termination decision was made for reasons unrelated to the compensable injury, then the hearing officer can, but does not have to, find that the disability has ended. That is, the hearing officer can find that the claimant's discharge from a light-duty job with the employer is the reason for the claimant's inability to obtain and retain employment at his preinjury wage, as opposed to the compensable injury being the cause. Our review of the record reveals that the hearing officer's determination that the termination of the

claimant's employment was the cause of his inability to obtain and retain employment at his preinjury wage for the period from May 15 to July 16, 2002, is supported by sufficient evidence and is not so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to reverse the challenged determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge